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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :17.12.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.2190 of 2016

E.S.Shanmugam

..Appellant/Petitioner

/versus/

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Anna Salai,
Chennai 600 002.

..Respondent/Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 06.12.2012 made in M.C.O.P.No.4005 of 2009 on the file of the Motor Accident Claims Tribunal, (II Small Causes Court), Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondent : Mr.Suresh Srinivasan
for Mr.K.Moorthy

J U D G M E N T

(The case has been heard through Video Conferencing)

This appeal is filed by the claimant seeking enhancement of compensation.

2.On 05.10.2009 at about 09.00 hours, when the claimant was riding his bi-cycle near Nageswara Rao Road in front of Nalli Silks, T.Nagar, Chennai, a Transport Corporation bus bearing Reg.No.TN-01-N-4588 came rash and negligently and hit the bi-cycle of the claimant. In the said accident, the claimant was severely injured and admitted in the hospital for his fractured leg. Claiming a sum of Rs.6,50,000/-, claim petition was filed. In the claim petition, it was stated that the claimant was earning a sum of Rs.6,000/- per month as house keeping supervisor in Pothys Textiles, T.Nagar, Chennai. At the time of



the accident, he was 20 years old. In the accident, his right leg got fractured and was treated in the hospital as in-patient for nearly 330 days. The claimant, during the peak hours, was riding his cycle on the same direction on the left side of the bus and when the another cyclist from the opposite side came and dashed against his bi-cycle and he lost his balance and fell on the left side of the bus and the rear wheel of the bus ran over him.

3. Before the Tribunal, the claimant and one Dr.K.J.Mathiazhagan were examined as PW-1 and PW-2. 8 exhibits were marked. The driver of the Corporation bus was examined as RW-1. Though the driver denied his negligence and alleged that, it was the fault of the claimant caused the accident. The Tribunal, relying upon the First Information Report (Ex.P1) and the evidence of the injured victim held that the bus driver is responsible for the accident.

4. As far as the quantum of compensation, the Tribunal, taking note of the discharge summary, which are marked as Exs.P2, P3 and P4, and the disability certificate Ex.P6, accepted the evidence of PW-2 that the claimant has suffered 55% partial permanent disability and awarded a total sum of Rs.4,64,000/- as compensation under various heads.

5. In the appeal, the claimant has stated that the Tribunal ought to have applied the multiplier for loss of income permanently. Instead it was awarded only a consolidated sum of Rs.1,20,000/-. So, the same has to be enhanced. It is submitted by the learned counsel appearing for the appellant/claimant that the Doctor in his evidence has stated that, the injury sustained by the claimant will cause him disability in earning. The said fact has not been considered by the Tribunal.

6. The learned counsel appearing for the respondent-Transport Corporation submitted that the Tribunal has rightly considered the evidence placed before it and has taken the estimated disability assessed by the Doctor, without any reduction and has awarded Rs.4,64,000/- which includes the loss of income for 12 months past and future medical expenses, mental agony, pain and suffering and loss of earning power besides, the compensation for disability.

7. On perusing the award and the disability certificate along with the discharge summary, this Court finds that the claimant/appellant has sustained fractured injury on his right leg. Due to mal-united fracture, he had undergone for further surgery and corrections. Records indicate that for nearly 1 year, he had been under treatment. PW-2 Dr.K.J.Mathiazhagan has assessed the disability as 55% partial permanent disability.



The Tribunal has found that it is not fit case for applying the multiplier for loss of earning power. However, has fairly awarded compensation of Rs.4,64,000/-.

8. On perusing the records and hearing the submissions of the learned counsel appearing for the appellant and the respondent, this Court finds that the claimant, at the time of the accident, was 20 years old. The fracture on his right leg has badly affected his marriage prospects and also amenities. This Court finds that the Tribunal ought to have awarded some compensation on these two heads. Since the Tribunal has omitted to do so, this Court awards a sum of Rs.50,000/- under the head of loss of marriage prospects and a sum of Rs.35,000/- under the head of loss of amenities. Since the appellant has undertaken 3 major surgeries at the span of one year, a sum of Rs.20,000/- is awarded under the head of mental agony. The rest of the compensation awarded under the other heads is confirmed.

9. Thus, the break up details of the modified award of this Court is as below:

Sl. No.	Particulars	Award amount of the Tribunal (Rs.)	Modified award of this Court (Rs.)	Confirmed/Enhanced/Reduced/Awarded
1.	Loss of income for 12 months	72,000-00	72,000-00	Confirmed
2.	Transportation	20,000-00	20,000-00	Confirmed
3.	Extra Nourishment	20,000-00	20,000-00	Confirmed
4.	Damage to clothes	2,000-00	2,000-00	Confirmed
5.	Medical expenses	10,000-00	10,000-00	Confirmed
6.	Future Medical Expenses	25,000-00	25,000-00	Confirmed
7.	Attender charges	10,000-00	10,000-00	Confirmed
8.	Loss Mental agony	25,000-00	20,000-00	Enhanced
	Loss of amenities		35,000-00	
	Loss of expectation of life		25,000-00	
9.	Loss of marriage prospects		50,000-00	Awarded
10.	Pain and suffering	50,000-00	50,000-00	Confirmed



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Sl. No.	Particulars	Award amount of the Tribunal (Rs.)	Modified award of this Court (Rs.)	Confirmed/Enhanced/Reduced/Awarded
11.	Disability of 55% at the rate of Rs.2,000/- per disability	1,10,000-00	1,10,000-00	Confirmed
12.	Loss of earning power	1,20,000-00	1,20,000-00	Confirmed
Total		4,64,000-00	5,69,000-00	Enhanced

10.The award of the Tribunal is modified from Rs.4,64,000-00 to Rs.5,69,000-00. The claimant/appellant is entitled to Rs.5,69,000-00 as compensation with interest at the rate of 7.5% p.a from the date of petition till the date of realisation. The respondent/Transport Corporation is directed to deposit the enhanced award money, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of the copy of the judgment. The claimant/ appellant is permitted to withdraw the award amount, less the amount already withdrawn if any, on filing appropriate application before the Tribunal.

11.In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
II Small Causes Court, Chennai.

Copy To

The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.41823

+1cc to Mr.K.Moorthy, Advocate, S.R.No.42372

C.M.A.No.2190 of 2016

PM(CO)

GMV(26/08/2021)